

AMENDED IN ASSEMBLY JUNE 26, 2014
AMENDED IN ASSEMBLY JUNE 19, 2014
AMENDED IN SENATE MAY 27, 2014
AMENDED IN SENATE MAY 7, 2014
AMENDED IN SENATE APRIL 29, 2014
AMENDED IN SENATE APRIL 9, 2014
AMENDED IN SENATE MARCH 26, 2014
AMENDED IN SENATE FEBRUARY 14, 2014

SENATE BILL

No. 894

**Introduced by Senator Corbett
(Coauthor: Senator Lara)**

January 13, 2014

An act to amend ~~Sections~~ *Section* 1569.335 and 1569.525 of the Health and Safety Code, relating to residential care facilities for the elderly.

LEGISLATIVE COUNSEL'S DIGEST

SB 894, as amended, Corbett. Residential care facilities for the elderly: revocation of license.

Existing law, the California Residential Care Facilities for the Elderly Act, provides for the licensure and regulation of residential care facilities for the elderly. These provisions are administered by the State Department of Social Services. ~~Violation of these provisions is a misdemeanor.~~

~~Under existing law, if the Director of Social Services determines that it is necessary to temporarily suspend a license of a residential care facility for the elderly in order to protect the residents or clients of the facility from physical or mental abuse, abandonment, or any other substantial threat to health or safety, the department is required to make every effort to minimize trauma for the residents. Existing law authorizes and requires the department, in the event of a temporary license suspension or revocation, to comply with specified procedures relating to the transfer of residents, including requiring the department to contact and work with any local agency that may have placement or advocacy responsibility for the residents of a residential care facility for the elderly, as specified, to locate alternative placement sites and contact responsible relatives.~~

~~Under this bill, if the Director of Social Services determines at any time during or following a temporary suspension or revocation of a license that there is a risk to the residents or clients of the facility from physical or mental abuse, abandonment, or any other substantial threat to health or safety, the department would be required to take any necessary action to minimize trauma for the residents, including, but not limited to, arranging for the preparation of the residents' records and medications for transfer and checking in on the status of each transferred resident within 24 hours of transfer. The bill would additionally require the department to contact the Office of the State Long-Term Care Ombudsman prior to implementing a decision to temporarily suspend or revoke a license.~~

~~Existing law requires, upon an order to revoke a license, a licensee to provide a 60-day written notice of license revocation that may lead to closure to the resident and the resident's responsible person within 24 hours of receipt of the department's order of revocation. Existing law requires a resident who transfers from the facility during that 60-day period to be entitled to a refund of preadmission fees in accordance with specified provisions. Existing law authorizes the licensee to secure the services of another licensee to manage the operations of the facility for a period of at least 60 days if a proposal is submitted that includes specified items.~~

~~This bill would make similar provisions apply in the case of an order to temporarily suspend a license and would require the licensee to provide written notice of the temporary suspension to the resident and the resident's responsible person as soon as practically possible but not later than within 24 hours of receipt of the temporary suspension order.~~

~~The bill would prohibit the licensee, upon receipt of an order to temporarily suspend or revoke a license, from accepting new residents or entering into admission agreements for new residents, except as specified.~~

~~This bill would generally make a licensee who fails to comply with these requirements liable for civil penalties in the amount of \$500 per violation per day for each day that the licensee is in violation of these provisions until the violation has been corrected. The bill would authorize a current or former resident of a residential care facility for the elderly covered under these provisions to bring a civil action against any person that owns, operates, establishes, manages, conducts, or maintains a residential care facility for the elderly who violates the specified rights of the resident.~~

Existing law requires the department to notify affected placement agencies and the Office of the State Long-Term Care Ombudsman whenever the department substantiates that a violation has occurred which poses a serious threat to the health and safety of any resident when the violation results in the assessment of any penalty or causes an accusation to be filed for the revocation of a license.

This bill would additionally require the department to provide the Office of the State Long-Term Care Ombudsman with a precautionary notification if the department begins to prepare to issue a temporary suspension or revocation of any license.

~~By expanding the definition of a crime, this bill would impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~yes~~-no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1569.335 of the Health and Safety Code
- 2 is amended to read:
- 3 1569.335. (a) The department shall provide the Office of the
- 4 State Long-Term Care Ombudsman, as defined in subdivision (c)
- 5 of Section 9701 of the Welfare and Institutions Code, with a

1 precautionary notification if the department begins to prepare to
2 issue a temporary suspension or revocation of any license, so that
3 the office may properly prepare to provide advocacy services if
4 and when necessary.

5 (b) The department shall notify affected public placement
6 agencies and the Office of the State Long-Term Care Ombudsman,
7 whenever the department substantiates that a violation has occurred
8 which poses a serious threat to the health and safety of any resident
9 when the violation results in the assessment of any penalty or
10 causes an accusation to be filed for the revocation of a license.

11 (c) (1) If the violation is appealed by the facility within 10 days,
12 the department shall only notify placement agencies of the violation
13 when the appeal has been exhausted.

14 (2) If the appeal process has not been completed within 60 days,
15 the placement agency shall be notified with a notation that indicates
16 that the case is still under appeal.

17 (3) The notice to each placement agency shall be updated
18 monthly for the following 24-month period and shall include the
19 name and location of the facility, the amount of the fine, the nature
20 of the violation, the corrective action taken, the status of the
21 revocation, and the resolution of the complaint.

22 SEC. 2. ~~Section 1569.525 of the Health and Safety Code is~~
23 ~~amended to read:~~

24 ~~1569.525. (a) If the director determines that it is necessary to~~
25 ~~temporarily suspend or to revoke a license of a residential care~~
26 ~~facility for the elderly in order to protect the residents or clients~~
27 ~~of the facility from physical or mental abuse, abandonment, or any~~
28 ~~other substantial threat to health or safety pursuant to Section~~
29 ~~1569.50, the department shall make every effort to minimize~~
30 ~~trauma for the residents.~~

31 ~~(b) After a decision is made to temporarily suspend or to revoke~~
32 ~~the license of a residential care facility for the elderly and prior to~~
33 ~~implementing that decision, the department shall contact both of~~
34 ~~the following:~~

35 ~~(1) The Office of the State Long-Term Care Ombudsman.~~

36 ~~(2) Any local agency that may have placement or advocacy~~
37 ~~responsibility for the residents of a residential care facility for the~~
38 ~~elderly. The department shall work with the local agencies, and~~
39 ~~the licensee if the director determines it to be appropriate, to locate~~

1 alternative placement sites and to contact relatives responsible for
2 the care of these residents:

3 (e) ~~The department shall use physicians and surgeons and other~~
4 ~~medical personnel deemed appropriate by the department to provide~~
5 ~~onsite evaluation of the residents and assist in any transfers.~~

6 (d) ~~The department shall require the licensee to prepare and~~
7 ~~submit to the licensing agency a written plan for relocation and~~
8 ~~compliance with the terms and conditions of the approved plans;~~
9 ~~and to provide other information as necessary for the enforcement~~
10 ~~of this section.~~

11 (e) ~~Upon receipt of an order to temporarily suspend or revoke~~
12 ~~a license, the licensee shall be prohibited from accepting new~~
13 ~~residents or entering into admission agreements for new residents.~~
14 ~~This subdivision shall not apply if a temporary manager or receiver~~
15 ~~is appointed pursuant to Section 1569.481 or 1569.482 and the~~
16 ~~director determines that the temporary manager or receiver is~~
17 ~~capable of accepting new residents.~~

18 (f) ~~Upon an order to temporarily suspend a license, the following~~
19 ~~shall apply:~~

20 (1) ~~The licensee shall provide written notice of the temporary~~
21 ~~suspension to the resident and the resident's responsible person;~~
22 ~~if applicable, as soon as practically possible, but no later than~~
23 ~~within 24 hours of receipt of the department's temporary~~
24 ~~suspension order.~~

25 (2) ~~The department may secure, or permit the licensee to secure,~~
26 ~~the services of a person who is not an immediate family member~~
27 ~~of the licensee or an entity that is not owned by the licensee to~~
28 ~~manage the day-to-day operations of the facility until the matter~~
29 ~~is heard pursuant to Section 1569.50, and for at least 60 days~~
30 ~~thereafter, if a proposal that includes both of the following is~~
31 ~~submitted to the department as soon as practically possible~~
32 ~~following the licensee's receipt of the department's temporary~~
33 ~~suspension order:~~

34 (A) ~~A completed "Application for a Community Care Facility~~
35 ~~or Residential Care Facility for the Elderly License" form (LIC~~
36 ~~200), or similar form as determined by the department, signed and~~
37 ~~dated by both the licensee and the person or entity described in~~
38 ~~this paragraph.~~

39 (B) ~~A copy of the executed agreement between the licensee and~~
40 ~~the person or entity described in this paragraph that delineates the~~

1 roles and responsibilities of each party and specifies that the person
2 or entity described in this paragraph shall have the full authority
3 necessary to operate the facility, in compliance with all applicable
4 laws and regulations, and without interference from the licensee.

5 (g) Upon a final order to revoke a license following any
6 applicable hearings required under this article, except when
7 following the temporary suspension of a license pursuant to Section
8 1569.50 that led to the transfer of all residents, the following shall
9 apply:

10 (1) The licensee shall provide a 60-day written notice of license
11 revocation that may lead to closure to the resident and the resident's
12 responsible person within 24 hours of receipt of the department's
13 final order of revocation.

14 (2) The department shall permit the licensee to secure the
15 services of a person who is not an immediate family member of
16 the licensee or an entity that is not owned by the licensee to manage
17 the day-to-day operations of the residential care facility for the
18 elderly for a period of at least 60 days, if a proposal that includes
19 both of the following is submitted to the department within 72
20 hours of the licensee's receipt of the department's final order of
21 revocation:

22 (A) A completed "Application for a Community Care Facility
23 or Residential Care Facility for the Elderly License" form (LIC
24 200), or similar form as determined by the department, signed and
25 dated by both the licensee and the person or entity described in
26 this paragraph.

27 (B) A copy of the executed agreement between the licensee and
28 the person or entity described in this paragraph that delineates the
29 roles and responsibilities of each party and specifies that the person
30 or entity described in this paragraph shall have the full authority
31 necessary to operate the facility, in compliance with all applicable
32 laws and regulations, and without interference from the licensee.

33 (h) (1) The person or entity described in paragraph (2) of
34 subdivision (f) or paragraph (2) of subdivision (g) shall be currently
35 licensed and in substantial compliance to operate a residential care
36 facility for the elderly that is of comparable size or greater and has
37 comparable programming to the facility. For purposes of this
38 subparagraph, the following definitions apply:

1 (A) “Comparable programming” includes, but is not limited to,
2 dementia care, hospice care, and care for residents with exempted
3 prohibited health care conditions.

4 (B) “Comparable size” means a facility capacity of 1 to 15
5 residents, 16 to 49 residents, or 50 or more residents.

6 ~~(2) The person or entity described in paragraph (2) of~~
7 ~~subdivision (f) or paragraph (2) of subdivision (g) shall not be~~
8 ~~subject to the application fee specified in Section 1569.185.~~

9 ~~(3) If the department denies a proposal to secure the services~~
10 ~~of a person or entity pursuant to paragraph (2) of subdivision (f)~~
11 ~~or paragraph (2) of subdivision (g), this denial shall not be deemed~~
12 ~~a denial of a license application subject to the right to a hearing~~
13 ~~under Section 1569.22 and other procedural rights under Section~~
14 ~~1569.51.~~

15 (i) ~~(1) Notwithstanding Section 1569.651 or any other law, for~~
16 ~~paid preadmission fees, a resident who transfers from the facility~~
17 ~~due to the notice of a temporary suspension or revocation of a~~
18 ~~license pursuant to this section is entitled to a refund in accordance~~
19 ~~with all of the following:~~

20 (A) ~~A 100-percent refund if preadmission fees were paid within~~
21 ~~six months of either notice required by this section.~~

22 (B) ~~A 75-percent refund if preadmission fees were paid more~~
23 ~~than 6 months, but not more than 12 months, before either notice~~
24 ~~required by this section.~~

25 (C) ~~A 50-percent refund if preadmission fees were paid more~~
26 ~~than 12 months, but not more than 18 months, before either notice~~
27 ~~required by this section.~~

28 (D) ~~A 25-percent refund if preadmission fees were paid more~~
29 ~~than 18 months, but not more than 25 months, before either notice~~
30 ~~required by this section.~~

31 ~~(2) A preadmission fee refund is not required if preadmission~~
32 ~~fees were paid 25 months or more before either notice required by~~
33 ~~this section.~~

34 ~~(3) The preadmission fee refund required by this paragraph shall~~
35 ~~be paid within 15 days of issuing either notice required by this~~
36 ~~section. In lieu of the refund, the resident may request that the~~
37 ~~licensee provide a credit toward the resident’s monthly fee~~
38 ~~obligation in an amount equal to the preadmission fee refund due.~~

39 ~~(4) If a resident transfers from the facility due to the revocation~~
40 ~~of a license, and the resident gives notice at least five days before~~

1 leaving the facility, or if the transfer is due to a temporary
2 suspension of the license order, the licensee shall refund to the
3 resident or his or her legal representative a proportional per diem
4 amount of any prepaid monthly fees at the time the resident leaves
5 the facility and the unit is vacated. Otherwise the licensee shall
6 pay the refund within seven days from the date that the resident
7 leaves the facility and the unit is vacated.

8 (j) Within 24 hours after each resident who is transferring
9 pursuant to these provisions has left the facility, the licensee that
10 had his or her license temporarily suspended or revoked shall,
11 based on information provided by the resident or the resident's
12 responsible person, submit a final list of names and new locations
13 of all residents to the department and the local ombudsman
14 program.

15 (k) If at any point during or following a temporary suspension
16 or revocation of a license the director determines that there is a
17 risk to the residents of a facility from physical or mental abuse,
18 abandonment, or any other substantial threat to health or safety,
19 the department shall take any necessary action to minimize trauma
20 for the residents, including, but not limited to, all of the following:

21 (1) Contact any local agency that may have placement or
22 advocacy responsibility for the residents, and work with those
23 agencies to locate alternative placement sites.

24 (2) Contact the residents' relatives, legal representatives,
25 authorized agents in a health care directive, or responsible parties.

26 (3) Assist in the transfer of residents, and, if necessary, arrange
27 or coordinate transportation.

28 (4) Provide onsite evaluation of the residents and use any
29 medical personnel deemed appropriate by the department to provide
30 onsite evaluation of the residents and assist in any transfers.

31 (5) Arrange for or coordinate care and supervision.

32 (6) Arrange for the distribution of medications.

33 (7) Arrange for the preparation and service of meals and snacks.

34 (8) Arrange for the preparation of the residents' records and
35 medications for transfer of each resident.

36 (9) Assist in any way necessary to facilitate a safe transfer of
37 all residents.

38 (10) Check on the status of each transferred resident within 24
39 hours of transfer.

1 ~~(l) The participation of the department and local agencies in the~~
2 ~~relocation of residents from a residential care facility for the elderly~~
3 ~~shall not relieve the licensee of any responsibility under this~~
4 ~~section. A licensee that fails to comply with the requirements of~~
5 ~~this section shall be required to reimburse the department and local~~
6 ~~agencies for the cost of providing these services. If the licensee~~
7 ~~fails to provide the services required in this section, the department~~
8 ~~shall request that the Attorney General's office, the city attorney's~~
9 ~~office, or the local district attorney's office seek injunctive relief~~
10 ~~and damages.~~

11 ~~(m) Notwithstanding Section 1569.49, a licensee who fails to~~
12 ~~comply with the requirements of this section shall be liable for~~
13 ~~civil penalties in the amount of five hundred dollars (\$500) per~~
14 ~~violation per day for each day that the licensee is in violation of~~
15 ~~this section, until the violation has been corrected. The civil~~
16 ~~penalties shall be issued immediately following the written notice~~
17 ~~of violation.~~

18 ~~(n) A current or former resident of a residential care facility for~~
19 ~~the elderly covered under this section may bring a civil action~~
20 ~~against any person that owns, operates, establishes, manages,~~
21 ~~conducts, or maintains a residential care facility for the elderly~~
22 ~~that violates the rights of the resident, as set forth in this section.~~
23 ~~Any person that owns, operates, establishes, manages, conducts,~~
24 ~~or maintains a residential care facility for the elderly that violates~~
25 ~~this section shall be responsible for the acts of the facility~~
26 ~~employees in violating this section and shall be liable for costs~~
27 ~~and attorney's fees. The residential care facility for the elderly~~
28 ~~may also be enjoined from permitting the violation to continue.~~
29 ~~The remedies specified in this section shall be in addition to any~~
30 ~~other remedy provided by law. For purposes of this subdivision,~~
31 ~~"person" includes, but is not limited to, a natural person, firm,~~
32 ~~partnership, or corporation, but shall not be construed to include~~
33 ~~the department or its employees.~~

34 ~~(o) This section shall not preclude the department from~~
35 ~~amending the effective date in the order of the suspension or~~
36 ~~revocation of a license and closing the facility, or from pursuing~~
37 ~~any other available remedies if necessary to protect the health and~~
38 ~~safety of the residents in care.~~

1 ~~SEC. 3. No reimbursement is required by this act pursuant to~~
2 ~~Section 6 of Article XIII B of the California Constitution because~~
3 ~~the only costs that may be incurred by a local agency or school~~
4 ~~district will be incurred because this act creates a new crime or~~
5 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
6 ~~for a crime or infraction, within the meaning of Section 17556 of~~
7 ~~the Government Code, or changes the definition of a crime within~~
8 ~~the meaning of Section 6 of Article XIII B of the California~~
9 ~~Constitution.~~

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